

with the State Forest Stewardship Coordinating Committee.

When a practice fails to meet the minimum specifications due to factors beyond the landowner's control, the State Forester may approve cost-share payments under the following conditions. (1) The landowner repeats the application or establishes additional eligible practices. (2) The landowner establishes a reasonable effort to meet the minimum requirements and the practice as performed adequately meets the objectives of the practice plan. In the case of death or incompetence of any landowner, the State Forester shall approve cost-share payment to the successor in title or other persons or entities in control of the property, if they agree to maintain the practice for the duration of the required maintenance period.

Nothing in this section shall be construed to authorize suit against the United States, the Department of Agriculture, the Forest Service, any State or any disbursing agent acting on behalf of the State. Claims of agencies of the United States Government are the only ones allowed against any payments to any landowner.

A landowner must have a management plan prior to receiving approval to implement any FLEP practice, except for management plan development. A service representative must approve the plan.

Section 230.43—Cost-share assistance—prohibited practices. This section identifies the cost-share activities that are prohibited in FLEP. These activities include items such as costs incurred before an application is approved and repeated practices. The State Forester has the authority to pre-approve costs incurred prior to an approved application. The State priority plan can describe materials and items that may be purchased before an application is approved. Repeating practices implemented with other Federal, State, or local government programs are prohibited, except where such practices are repeated due to failure of a prior practice without fault of the landowner. Recurring practices as noted in this subpart may be repeated.

Practices that are prohibited include capital investments or capital improvements that are not related to a FLEP practice, such as purchase of land or any interest in land, or any interest in an endowment as provided in 230.32. Also prohibited is the development of or improvement to landowner nursery operations, development of or improvement to nut and fruit orchards or Christmas tree plantings or maintenance, or any practice that is not

related to the long-term sustainability of nonindustrial private forest lands or agroforestry practices.

Section 230.44—Cost-share assistance—reporting requirement. There are 11 categories for reporting FLEP cost-share practices. They will be reported annually through the Forest Service automated data system. Most categories will be reported in acres treated. FLEP1 will include number of plans developed as well as acres planned. States will only report those categories for which they provide cost-share. Each State shall report these practices to the Responsible Official who will collect a report for their States and provide this information to the Forest Service Washington Office Cooperative Forestry Staff.

Section 230.45—Recapture of cost-share assistance. This section authorizes the recapture of payments to landowners under a range of circumstances including: the use of this program to procure unjust benefits; the action or failure to take action by the landowner or successor that results in the deliberate destruction or impairment of a practice; or the landowners sale, conveyance, or other loss of control of land before the required practice maintenance period has ended and the new landowner does not agree to maintain the practice for the duration of the practice maintenance period.

Section 230.46—Information collection requirements. This section provides the Office of Management and Budget control number assigned to the information collection requirements governing the preparation of a State priority plan, a management plan, practice plan, reporting requirements, and the application requirements of this subpart, as required by the Paperwork Reduction Act of 1995. Notice of this new information collection was published in the **Federal Register** with a request for comment on September 20, 2002 (67 FR 59246). No comments were received. This has been assigned Office of Management and Budget (OMB) control number 0596-0168.

Good Cause Statement

By adoption of this interim final rule, FLEP will be implemented in accordance with the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). This interim final rule ensures consistent and proper use of funds by the agency as well as the State forestry agencies and associated third parties. This rule is being published as an interim final rule to allow for prompt implementation of FLEP. Agency directives providing further guidance on administration of FLEP are issued in

Forest Service Directive Manual Chapter 3310. The 2002 Farm Bill repealed the two existing programs, Stewardship Incentive Program (SIP) and Forestry Incentive Program (FIP), which provided assistance to nonindustrial forest land owners. Administration of SIP and FIP will continue on a limited basis only until remaining funds from these programs have been expended. Prompt implementation of FLEP is important to ensure there is no gap in financial assistance to qualified landowners due to the repeal of SIP and FIP. The comments received on this interim final rule during the 60-day comment period following publication in the **Federal Register**, along with experience from the first year of FLEP implementation, will be used to develop a final rule. This interim final rule has also received review by a wide variety of partners and interested parties.

Regulatory Certifications

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. An analysis has been conducted addressing the costs and benefits associated with promulgating this interim final rule to implement the FLEP authorized by 16 U. S. C. 2101 *et seq.*, as amended (Pub. L. 107-171).

The Forestry Incentives Program (FIP) and the Stewardship Incentives Program (SIP) were both repealed in the 2002 Farm Bill. These programs assisted private forest landowners in managing forestland for multiple benefits. In FY 2002, these two programs were allocated \$10 million. Between 1996 and 2002, FIP funding averaged \$6.3 million. SIP was allocated \$4.5 million in 1997 and 1998, and no Federal funds in 1999, 2000, and 2001. FLEP is authorized to receive up to \$100 million through FY 2007.

The primary economic effects of the interim final regulations are an increase in forest health and sustainability due to better management practices on NIPF land, as well as non-monetized benefits such as improved water quality, wildlife habitat, fishing opportunities, carbon sequestration, and enhanced recreation. The costs of the interim final regulation to the Federal treasury will be \$100 million over 5 years, as specified in the legislation, or, more than \$87 million when discounted at 7% discount rate. The discounted increase in Federal expenditures is estimated at \$43 million. The States will administer the program using a portion of these funds. Costs to individual landowners are